

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM HOWARD PROTO, JR.,

Defendant.

Case No. 21-cr-174 (NEB/DTS)

**AMENDED MOTION FOR
PRELIMINARY ORDER
OF FORFEITURE**

The United States of America, by and through Andrew M. Luger, United States Attorney for the District of Minnesota, and Craig R. Baune, Assistant United States Attorney, respectfully moves this Court for a Preliminary Order of Forfeiture pursuant to 18 U.S.C. § 924(d)(1), 28 U.S.C. § 2461(c) and Fed. R. Crim. P. 32.2.

I. BACKGROUND

On December 22, 2021, a grand jury returned a Superseding Indictment against Defendant William Howard Proto, Jr. The Forfeiture Allegations of the Superseding Indictment provided notice as to Counts 2, 4 and 5 that the United States sought forfeiture, pursuant to 18 U.S.C. § 924(d)(1) in conjunction with 28 U.S.C. § 2461(c), of any firearms and ammunition involved in or used in any knowing violation of 18 U.S.C. § 922(g), including but not limited to a Ruger SP101 .357 Magnum revolver, bearing serial number 572-97805 and a Ruger 9mm semiautomatic handgun, bearing serial number 382-46168 (the “Property”).¹

¹ The Forfeiture Allegations listed a “black and silver assault-style rifle with no serial number.” The United States never took possession of this firearm; therefore, it is not included in this motion. In addition, the U.S. Currency amounts listed in the Forfeiture

Count 2 charged the Defendant with possessing a Ruger SP101 .357 Magnum revolver (serial number 572-97805) while being a felon, in violation of 18 U.S.C. §§ 922(g) and 924(a)(2). Count 4 similarly charged the Defendant with possessing a Ruger 9mm semiautomatic handgun, bearing serial number 382-46168, while being a felon, in violation of 18 U.S.C. §§ 922(g) and 924(a)(2).

On June 13, 2022, the Defendant pled guilty to Count 4 of the Superseding Indictment, ECF Nos. 33 and 83, which, as charged, required the Defendant admit to illegal possession of the Ruger 9mm semiautomatic handgun, bearing serial number 382-46168.

On June 15, 2022, the Jury returned a guilty verdict against the Defendant as to Counts 1, 2, 3 and 5. ECF No. 90.

II. ARGUMENT

Rule 32.2(b) of the Federal Rules of Criminal Procedure provides that:

(b) Entering a Preliminary Order of Forfeiture.

(1) Forfeiture Phase of the Trial.

(A) Forfeiture Determinations. As soon as practical after a verdict or finding of guilty, or after a plea of guilty . . . on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense.

(B) Evidence and Hearing. The court's determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted

Allegations are being forfeited administratively and are therefore also excluded from this motion.

by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(2) Preliminary Order.

(A) Contents of a Specific Order. If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture . . . directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

Based upon the evidence set forth in the Superseding Indictment, the evidence presented at trial, the guilty plea to Count 4, and the guilty verdict as to Counts 2 and 5, the United States has established the requisite nexus between the Property and the offense to which the Defendant has pled guilty; that is, the two firearms were involved in Counts 2, 4 and 5 of the Superseding Indictment. Accordingly, the Property is subject to forfeiture to the United States pursuant to 18 U.S.C. § 924(d)(1) in conjunction with 28 U.S.C. § 2461(c).

Section 853(n)(1) of Title 21, as incorporated by 28 U.S.C. § 2461(c), provides that, following the entry of an order of forfeiture, the United States shall publish notice of the order and may also provide direct written notice of the order to persons known to have alleged an interest in the Property. Sections 853(n)(2)-(6) of Title 21 set out the process by which third parties asserting a legal interest in the Property can obtain a judicial determination of the validity of the legal claims or interests they assert. Pursuant to Section 853(n)(7), following the disposition of all third-party petitions or, if no such petitions are

filed, following the expiration of the time period specified within which to file such petitions, the United States shall have clear title to the property that is the subject of the order of forfeiture.

III. CONCLUSION

For the foregoing reasons, the United States moves this Court for a Preliminary Order of Forfeiture for the Property.

Dated: 11-8-2022

Respectfully submitted,

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